

1 THOMAS S. BROWN, CA Bar No. 178620

2 tsbrown@foley.com

3 NICHOLAS P. HONKAMP, CA Bar No. 261299

4 nhonkamp@foley.com

5 **FOLEY & LARDNER LLP**

6 555 CALIFORNIA STREET

7 SUITE 1700

8 SAN FRANCISCO, CA 94104-1520

9 TELEPHONE: 415.434.4484

10 FACSIMILE: 415.434.4507

11 ROGER A. LANE (admitted *pro hac vice*)

12 rlane@foley.com

13 COURTNEY WORCESTER (admitted *pro hac vice*)

14 cworcester@foley.com

15 **FOLEY & LARDNER LLP**

16 111 HUNTINGTON AVENUE

17 BOSTON, MA 02199

18 TELEPHONE: 617.342.4000

19 FACSIMILE: 617.342.4001

20 Attorneys for New Enterprise Associates, Inc.

21
22
23
24
25
26
27
28
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Michael Zeleny,

Plaintiff,

vs.

Edmund G. Brown, Jr., et al.,

Defendants.

Case No. 17-cv-07357-RS

**NEA'S REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF NEA'S MOTION TO
DISMISS PLAINTIFF'S SECOND
AMENDED COMPLAINT**

Date: November 7, 2019

Time: 1:30 p.m.

Courtroom: 3, 17th Floor

Pursuant to Federal Rule of Evidence 201, Defendant New Enterprise Associates, Inc. ("NEA"),

1 requests that the Court take judicial notice of pleadings and court records in support of its motion to
2 dismiss filed on September 25, 2019.

3 Federal Rule of Evidence 201 provides that, upon request, a court shall take judicial notice of facts
4 that are “capable of accurate and ready determination by resort to sources whose accuracy cannot
5 reasonably be questioned.” Fed. R. Evid. 201. Examples of matters whose accuracy cannot reasonably
6 be questioned are public records such as pleadings, orders and other papers on file in another action
7 pending in court, or the legislative history of laws, rules or ordinances. *See Mack v. South Bay Beer*
8 *Distributors, Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986), abrogated on other grounds by *Astoria Federal*
9 *Sav. And Loan Ass’n Solimino*, 501 U.S. 104 (1991); *Rupert v. Bond*, 68 F.Supp.3d 1142 (N.D. 2014) (in
10 connection with motion to dismiss, granting request for judicial notice of, *inter alia*, pleadings,
11 declarations, and orders issued in other courts).

12 In ruling on a motion to dismiss for failure to state a claim, the court may judicially notice public
13 records. *MGIC Idem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986) (holding that a court may take
14 judicial notice of official records and reports without converting a Rule 12(b)(6) motion into a Rule 56
15 motion for summary judgment); *Shaw v. Hahn*, 56 F.3d 1128, 1129 n.1 (9th Cir. 2005).

16 For the foregoing reasons, Defendant NEA requests that the Court take judicial notice of the
17 following document offered in support of its Motion to Dismiss Plaintiff’s Section 1983 claim against
18 NEA on the grounds, *inter alia*, that the *Noerr-Pennington* doctrine provides immunity for NEA’s actions.
19 A true and correct copies of this document is attached to the declaration of Roger A. Lane filed
20 concurrently herewith:

21 1. **Exhibit A** – Notice of Entry of Judgment and Permanent Injunction entered in *New Enterprise*
22 *Associates, Inc. v. Zeleny*, Case No. Civ. 499465 (California Superior Court, County of San Mateo) for
23 the proposition that a Permanent Injunction issued against Plaintiff on September 22, 2011 and that he
24 agreed to pay NEA \$25,000.

FOLEY & LARDNER LLP

September 25, 2019

/s Roger A. Lane

Roger A. Lane

Courtney Worcester

Attorneys for New Enterprise Associates, Inc.

PROOF OF SERVICE

I hereby certify that on September 25, 2019, I electronically filed the foregoing document using the Court's CM/ECF system. I am informed and believe that the CM/ECF system will send a notice of electronic filing to the interested parties.

/s/ Roger A. Lane

Roger A. Lane

NEA's REQUEST FOR JUDICIAL NOTICE

Case No. 17-cv-07357-RS